

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-X

DANA GROTTANO, N.D., A.R. and D.M.

*Individually and on behalf of all others similarly
situated,*

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

-X

Defendant **C.O. THOMASENA GRAHAM** (ðDefendantö by her attorneys, **KOEHLER & ISAACS LLP**, as and for an Answer with Cross-Claims to the Third Amended Complaint sets forth, upon information and belief, as follows:

AS AND FOR A RESPONSE TO THE INTRODUCTION

1. Defendant denies the legal conclusion set forth in paragraph "1" of the Third Amended Complaint and refers all questions of law to this Honorable Court.
2. Defendant denies the legal conclusions set forth in paragraph ð2ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.
3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ð3ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.
4. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ð4ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph  5  of the Third Amended Complaint and refers all questions of law to this Honorable Court.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph  6  of the Third Amended Complaint and refers all questions of law to this Honorable Court.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph  7  of the Third Amended Complaint and refers all questions of law to this Honorable Court.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph  8  of the Third Amended Complaint as it relates to plaintiff Grottano s actions, denies engaging in wrongdoing as it relates to the search and refers all questions of law to this Honorable Court.

9. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph  9  of the Third Amended Complaint and refers all questions of law to this Honorable Court.

10. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph  10  of the Third Amended Complaint and refers all questions of law to this Honorable Court.

11. Defendant denies the legal conclusions set forth in paragraph  11  of the Third Amended Complaint and refers all questions of law to this Honorable Court.

12. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph  12  of the Third Amended Complaint and refers all questions

of law to this Honorable Court.

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ¶13 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

14. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ¶14 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ¶15 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

16. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ¶16 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

17. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ¶17 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

18. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ¶18 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

19. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ¶19 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ö20ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

21. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ö21ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

22. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph ö22ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

23. The allegations set forth in paragraph ö23ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

24. The allegations set forth in paragraph ö24ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

RESPONSE TO JURISDICTION AND VENUE

25. The allegations contained in paragraph ö25ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

26. The allegations contained in paragraph ö26ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

27. The allegations contained in paragraph ö27ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

AS AND FOR A RESPONSE TO PARTIES

28. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶28ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

29. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶29ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

30. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶30ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

31. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶31ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

32. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶32ö of the Third Amended Complaint, refers all questions of law to this Honorable Court but admits the Defendant City is a municipality.

33. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶33ö of the Third Amended Complaint, refers all questions of law to this Honorable Court but admits Defendant Ponte is the DOC Commissioner.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶34ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

35. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "35" of the Third Amended Complaint and refers all questions of law to this Honorable Court.

36. Defendant denies in the form alleged the allegations contained in paragraph "36" of the Third Amended Complaint, refers all questions of law to this Honorable Court but admits she worked as a correction officer at all times relevant to the Third Amended Complaint.

37. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö37ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO CLASS ALLEGATIONS

38. The allegations contained in paragraph ö38ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

39. The allegations contained in paragraph ö39ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

40. The allegations contained in paragraph ö40ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

41. The allegations contained in paragraph ö41ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

42. The allegations contained in paragraph ö42ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

43. Defendant denies the legal conclusion set forth in paragraph ö43ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

44. The allegations contained in paragraph ¶44 of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

45. The allegations contained in paragraph ¶45 of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

AS AND FOR A RESPONSE TO FACTS

46. The allegations contained in paragraph ¶46 of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

47. Defendant denies the legal conclusion contained in paragraph ¶47 of the Third Amended Complaint and refers any questions of law to this Honorable Court.

48. Defendant denies the legal conclusion contained in paragraph ¶48 of the Third Amended Complaint and refers any questions of law to this Honorable.

49. Defendant denies the legal conclusion contained in paragraph ¶49 of the Third Amended Complaint and refers any questions of law to this Honorable Court.

50. Defendant denies the legal conclusion set forth in paragraph ¶50 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

51. Defendant denies the legal conclusion set forth in paragraph ¶51 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

Response to Plaintiff Grottano's Experience

52. Defendant denies the legal conclusion contained in paragraph ¶52 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

53. The allegations contained in paragraph ¶53 of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

54. The allegations contained in paragraph ö54ö of the Third Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

55. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö55ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

56. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö56ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

57. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö57ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

58. Defendant denies the allegations contained in paragraph contained in paragraph ö58ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

59. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö59ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

60. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö60ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

61. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö61ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

62. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶62ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

63. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶63ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

64. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶64ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

65. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶65ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

66. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶66ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

67. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶67ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

68. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶68ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

69. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶69ö of the Third Amended Complaint and refers all

questions of law to this Honorable Court.

70. Defendant denies the legal conclusion set forth in paragraph ö70ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

71. Defendant denies the legal conclusion set forth in paragraph ö71ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

Response to N.D.'s Experience

72. Defendant denies the legal conclusion contained in paragraph ö72ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

73. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö73ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

74. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö74ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

75. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö75ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

76. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö76ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

77. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ö77ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

78. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶78ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

79. Defendant denies the legal conclusion contained in paragraph ¶79ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

Response to A.R.'s Experience

80. Defendant denies the legal conclusion contained in paragraph ¶80ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

81. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶81ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

82. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶82ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

83. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶83ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

84. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶84ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

85. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶85ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

86. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶86ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

87. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶87ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

88. The allegations set forth in paragraph ¶88ö of the Third Amended Complaint do not require a response from the Defendant.

89. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶89ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

90. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶90ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

91. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶91ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

92. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶92ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

93. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶93ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

94. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶94ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

95. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶95ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

96. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶96ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

97. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶97ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

98. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶98ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

99. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶99ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

100. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶100ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

101. Defendant denies the legal conclusion contained in paragraph ¶101ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

Response to D.M.'s Experience

102. Defendant denies the legal conclusion contained in paragraph ¶102 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

103. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶103 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

104. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶104 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

105. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶105 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

106. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶106 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

107. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶107 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

108. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ¶108 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

109. Defendant denies the allegations contained in paragraph ¶109 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

110. Defendant denies the allegations contained in paragraph ¶110 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

111. Defendant denies the allegations contained in paragraph ¶111 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

112. Defendant denies the allegations contained in paragraph ¶112 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

113. Defendant denies the allegations contained in paragraph ¶113 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

114. Defendant denies the allegations contained in paragraph ¶114 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

115. Defendant denies the allegations contained in paragraph ¶115 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

116. Defendant denies the legal conclusions contained in paragraph ¶116 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

117. Defendant denies the legal conclusion contained in paragraph ¶117 of the Third Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO FIRST CAUSE OF ACTION
(Section 1983- Fourth & Fourteenth Violations)

118. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ö1ö through ö117ö above with the same force and effect as if fully set forth herein.

119. Defendant denies the allegations contained in paragraph ö119ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

120. Defendant denies the allegations contained in paragraph ö120ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

121. Defendant denies the allegations contained in paragraph ö121ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

122. Defendant denies the allegations contained in paragraph ö122ö of the Third Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO SECOND CAUSE OF ACTION
(NYS Constitution)

123. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs ö1ö through ö122ö above with the same force and effect as if fully set forth herein.

124. Defendant denies the allegations contained in paragraph ö124ö and refers all questions of law to this Honorable Court.

125. Defendant denies the allegations contained in paragraph ö125ö and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO IRREPARABLE HARM

126. Defendant denies the legal conclusion contained in paragraph ö126ö and refers all questions of law to this Honorable Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Third Amended Complaint fails to state a cause of action upon which relief may be granted against the Defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to punitive damages under the circumstances of this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Defendant is entitled to any setoff applicable under the circumstances of this action.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Defendant is entitled to immunity as she, at all times relevant to the Third Amended Complaint, reasonably, properly and lawfully exercised her discretion as a public employee.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Plaintiffs failed to satisfy mandatory conditions precedent to the instant action including but without limitation, those established under Sections 50-e, 50-h and 50-i of the New York General Municipal Law.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend and/or supplement these affirmative defenses during the course of this litigation.

**FIRST CROSS-CLAIM AGAINST
DEFENDANT CITY OF NEW YORK**

127. At all times relevant in this action, all of the actions of the Defendant were performed as part of her duties and within the scope of her employment and the rules and regulations as a Correction Officer for the New York City Department of Correction.

128. Any damages sustained by the plaintiffs at the time or place mentioned in the Third Amended Complaint are embraced within the indemnification clause of Section 50-k of the New York State General Municipal Law.

129. Section 50-k(3) of the New York State General Municipal Law states:

The city shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained; the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee

130. Pursuant to 50-k(3), if it is shown that the Defendant is in any way liable to the plaintiffs based upon on the allegations in the Third Amended Complaint, the Defendant is entitled to recover from the City of New York the full amount of any judgment which might be rendered against the Defendant.

**SECOND CROSS-CLAIM AGAINST
DEFENDANT CITY OF NEW YORK**

131. Defendant repeats, reiterates and re-alleges the allegations set forth in paragraphs ö127ö through ö130ö with the same force and effect as if fully set forth herein.

132. Defendant has denied the material allegations asserted against her in the underlying action and has asserted affirmative defenses.

133. If the plaintiffs sustained injuries and damages as alleged in the Third Amended Complaint, such injuries and damages were sustained by reason of negligence by the Defendant City of New York, its agents, servants and/or employees.

134. Therefore, if the injuries and damages alleged in the Third Amended Complaint were caused as a result of negligence or wrongdoing other than by the plaintiffsö own culpable conduct, then such damage is a result of the knowing, reckless and/or grossly negligent acts and omissions of the Defendant City of New York and its supervisory officials.

135. Consequently, if it is shown that the Defendant is in any way liable to the plaintiffs based upon the allegations in the Third Amended Complaint, Defendant is entitled to recover from the City of New York the full amount of any judgment that might be rendered against the Defendant.

WHEREFORE, Defendant **C.O. THOMASENA GRAHAM** demands:

- (a) Judgment dismissing the Third Amended Complaint in its entirety;
- (b) Judgment on each of her cross-claims against the Defendant City of New York for the amount of any judgment that may be obtained herein by the plaintiffs against the Defendant, or in an amount equal to the excess over and above his equitable share of any such judgment and
- (c) Together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 24, 2016

Respectfully Submitted,

KOEHLER & ISAACS LLP

_____*/s/ Julie A. Ortiz*_____
Julie A. Ortiz (JR-1817)
Attorneys for Defendant: Graham
61 Broadway, 25th Floor
New York, New York 10006
(917) 551-1300

To: ***Via ECF & Regular Mail***
Giskan Solotaroff Anderson & Stewart LLP
Attorneys for Plaintiff
11 Broadway
New York, New York 10004
Attn: Raymond Audain, Esq.
(212) 847-8315

Via ECF & Regular Mail
New York City Law Department
Attorneys for Defts: City of NY & Ponte
100 Church Street
New York, New York 10007
(212) 356-2654
Attn: Michael Gertzer, Esq.

CERTIFICATE OF SERVICE

I certify that on May 24, 2016 I have served a copy of **Defendant Graham's Answer with Cross-Claims to the Third Amended Complaint** upon all counsel as follows:

Via ECF & Regular Mail
Giskan Solotaroff Anderson & Stewart LLP
Attorneys for Plaintiff
11 Broadway
New York, New York 10004
Attn: Raymond Audain, Esq.
(212) 847-8315

Via ECF & Regular Mail
New York City Law Department
Attorneys for Dfts: City of NY & Ponte
100 Church Street
New York, New York 10007
(212) 356-2654
Attn: Michael Gertzer, Esq.

Dated: New York, New York
May 24, 2016

_____*/s/ Julie A. Ortiz*_____
Julie A. Ortiz (JR-1817)